

ENVIRONMENTAL ASSESSMENT ACT
(Cap. 65:07)

ENVIRONMENTAL ASSESSMENT (ESTABLISHMENT OF APPEALS
COMMITTEE) ORDER, 2019
(Published on 19th March, 2019)

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N EXERCISE of the powers conferred on the Minister of Environment, Natural Resources Conservation and Tourism by section 13 (2) of the Environmental Assessment Act, the following Order is hereby made —

PART I — *Preliminary*

This Order may be cited as the Environmental Assessment (Establishment of Appeals Committee) Order, 2019. Citation

PART II — *Establishment of Appeals Committee*

Establishment
of Appeals
Committee

2. (1) There is hereby established a committee to be known as the Appeals Committee.

(2) The Appeals Committee shall be composed of —

(a) a Chairperson; and

(b) two members appointed by the Minister who shall be from —

(i) any regulatory or licensing authority,

(ii) a non-governmental organisation,

(iii) the private sector,

(iv) any local authority, or

(v) registered and certified Environmental Assessment practitioners.

(3) The Minister shall appoint the Chairperson of the Appeals Committee who —

(a) is an attorney admitted to practice in the courts of Botswana in accordance with the Legal Practitioners Act; and

(b) has at least five years experience.

(4) The Vice Chairperson of the Appeals Committee shall be elected by the members from amongst their number.

(5) The Appeals Committee shall meet at such place and time as it may determine and shall be convened by the Chairperson of the Appeals Committee.

(6) The Chairperson shall preside at any meeting of the Appeals Committee and, in his or her absence, the Vice Chairperson.

(7) A decision of the Appeals Committee on any matter shall be by a majority of the members present and voting at the meeting and, in the event of an equality of votes, the Chairperson shall have a casting vote in addition to his or her deliberative vote.

(8) At any meeting of the Appeals Committee, a quorum shall be constituted by at least two of the members.

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Tenure of office
of member

3. (1) The tenure of office of a member shall be for a period not exceeding five years or for such a period as may be stipulated in the instrument appointing him or her.

(2) The appointment of members shall be staggered to ensure continuity of the business of the Appeals Committee.

(3) A member whose term has expired shall be eligible for re-appointment for one more term.

Filling of
vacancy

4. (1) Where the office of a member becomes vacant before the expiry of his or her term of office, the Minister shall, in accordance with paragraph 2, appoint another person to fill that vacancy and that appointment shall be for the remaining duration of the term of the original member.

(2) The provisions of paragraph (1) shall not apply where the remainder of the period for which the member who vacated office is less than six months.

Disqualification

5. A person shall not be appointed as a member, nor shall a person qualify to be appointed as a member who —

(a) is not a fit and proper person;

(b) has been adjudged or otherwise declared insolvent or bankrupt; or

(c) has been convicted of a criminal offence in or outside Botswana within the last ten years.

6. (1) The Minister may suspend a member where —
- (a) that member is absent without reasonable cause from three consecutive meetings of the Appeals Committee; or
 - (b) criminal proceedings have been instituted against that member for an offence that attracts a prison sentence.

Removal or
suspension of
member

- (2) The Minister may remove a member where —
- (a) that member is inefficient;
 - (b) a member is convicted of a criminal offence and sentenced to a prison term;
 - (c) a member has been found to be physically or mentally incapable of performing his or her duties efficiently; or
 - (d) a member has acted in contravention of the Environmental Assessment Act.

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7. (1) Where a member is present at a meeting at which any matter which is the subject of consideration and in which matter that member is directly or indirectly interested in a private capacity, he or she shall forthwith, upon the commencement of the meeting, disclose such interest and shall not, unless the Appeals Committee otherwise directs, take part in any consideration or discussion of, or vote on, any question concerning that matter.

Disclosure of
interest

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of proceedings at which it is made.

(3) Where a member fails to disclose his or her interest in accordance with subparagraph (1) and the Appeals Committee makes a decision which benefits that member directly or indirectly, that decision shall be void to the extent to which it benefits him or her.

(4) A person who contravenes the provisions of subparagraph (1) commits an offence and is liable to a fine not exceeding P2 000, or to imprisonment for a term not exceeding three months, or to both.

8. (1) A member shall not disclose any confidential information relating to the affairs of the Appeals Committee which he or she acquires during the performance of his or her duties in the Appeals Committee.

Confidentiality

(2) Notwithstanding the provisions of subparagraph (1), a member may disclose information relating to the affairs of the Appeals Committee acquired during the performance of his or her duties —

- (a) within the scope of his or her duties; or
- (b) where required to —
 - (i) by an order of court,
 - (ii) under any written law, or
 - (iii) in the investigation of an offence.

(3) A person who contravenes the provisions of this paragraph commits an offence and is liable to a fine not exceeding P2 000 or to imprisonment for a term not exceeding three months, or to both.

9. A member shall be paid such remuneration, travelling expenses and other expenses and allowances, incurred in connection with his or her services in the Committee, if any, as the Minister may from time to time determine.

Remuneration
and allowances

PART III — Procedure of Appeals

Powers of Appeals Committee

10. (1) The Appeals Committee shall in considering an appeal regulate its own proceedings and may —

- (a) take evidence on oath;
- (b) require a witness to produce relevant documents or to furnish written particulars as necessary; or
- (c) adjourn any hearing and inform the parties of a date and time of the hearing.

(2) The Appeals Committee shall hold its first meeting on such date and at such place as the Minister may determine, or as frequently as the business of the Appeals Committee demands that the Chairperson convenes the Appeals Committee, and at such a place and time as the Chairperson shall determine.

(3) The Chairperson shall give notice of not less than 14 days written notice of the meeting, provided that if the urgency of any particular matter does not permit the giving of notice, a special meeting may be called by giving a shorter notice.

(4) The Appeals Committee shall not be bound by the rules of evidence or procedure applicable in a court of law and may disregard any technical irregularity which is likely to result in a miscarriage of justice.

Decision of Appeals Committee

11. (1) The Appeals Committee may —

- (a) affirm the decision of the competent authority; or
- (b) vary or set aside the decision of the competent authority and remit the matter to the competent authority for consideration in accordance with its direction or recommendation.

(2) The Appeals Committee shall give reasons in the form of a written decision signed by the Chairperson and such decision shall be served on the parties.

(3) Subject to subparagraph (5), a decision of the Appeals Committee shall come into operation upon the giving of the decision or on such other date as may be specified by the Appeals Committee.

(4) Where the Appeals Committee varies a decision of the competent authority, the decision as varied shall be deemed to be the decision of the competent authority unless the Appeals Committee orders otherwise.

(5) A decision of the Appeals Committee shall have effect and be enforceable as if it were a decision of a court of competent jurisdiction.

(6) A decision of the Appeals Committee shall be a public record and shall be open to inspection by any member of the public during office hours.

Hearing to be open to public

12. A hearing before the Appeals Committee shall be open to the public unless the Appeals Committee, on the request of either party, directs otherwise.

Representation before Appeals Committee

13. A party to the proceedings before the Appeals Committee may be represented by a legal practitioner, or be represented by any other person so authorised by the party.

Contempt of Appeals Committee

14. A person who —

- (a) interrupts the proceedings of the Appeals Committee;
- (b) disregards the decision of the Appeals Committee; or

(c) does anything that would, if the Appeals Committee were a court of record, constitutes contempt of court, commits an offence and is liable to a fine not exceeding P5 000 or to imprisonment for a term not exceeding six months, or to both.

PART IV – Miscellaneous

15. A person shall not bring any action, suit, prosecution or any other proceeding personally against a person who is or was a member of the Appeals Committee in respect of any act done or omitted to be done in good faith in the discharge of any function under this Order. Immunity from suit

MADE this 13th day of March, 2019.

O. K. MOKAILA,
*Minister of Environment, Natural Resources
Conservation and Tourism.*